UNITED STATES PATENT AND TRADEMARK OFFICE

APPLICATION NO.	FILING DATE	FIRST NAMED INVENTOR	ATTORNEY DOCKET NO.	CONFIRMATION NO.
09/897,100	07/03/2001	Takeshi Ishida	826.1734	1690

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EXAMINER
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ART UNIT	PAPER NUMBER
2182	

MAIL DATE	DELIVERY MODE
10/22/2007	PAPER

Please find below and/or attached an Office communication concerning this application or proceeding.

The time period for reply, if any, is set in the attached communication.

	Application No.	Applicant(s)
Office Action Summary	09/897,100	ISHIDA ET AL.
	Examiner	**Art Unit**	
	Eron J. Sorrell	2182	

-- The MAILING DATE of this communication appears on the cover sheet with the correspondence address --

Period for Reply

A SHORTENED STATUTORY PERIOD FOR REPLY IS SET TO EXPIRE _3_ MONTH(S) OR THIRTY (30) DAYS, WHICHEVER IS LONGER, FROM THE MAILING DATE OF THIS COMMUNICATION.

- Extensions of time may be available under the provisions of 37 CFR 1.136(a). In no event, however, may a reply be timely filed after SIX (6) MONTHS from the mailing date of this communication.
- If NO period for reply is specified above, the maximum statutory period will apply and will expire SIX (6) MONTHS from the mailing date of this communication.
- Failure to reply within the set or extended period for reply will, by statute, cause the application to become ABANDONED (35 U.S.C. § 133). Any reply received by the Office later than three months after the mailing date of this communication, even if timely filed, may reduce any earned patent term adjustment. See 37 CFR 1.704(b).

Status

1)☒ Responsive to communication(s) filed on _06 August 2007_.

2a)☒ This action is **FINAL**.   2b)☐ This action is non-final.

3)☐ Since this application is in condition for allowance except for formal matters, prosecution as to the merits is closed in accordance with the practice under *Ex parte Quayle*, 1935 C.D. 11, 453 O.G. 213.

Disposition of Claims

4)☒ Claim(s) _1-13_ is/are pending in the application.

    4a) Of the above claim(s) _____ is/are withdrawn from consideration.

5)☐ Claim(s) _____ is/are allowed.

6)☒ Claim(s) _1-13_ is/are rejected.

7)☐ Claim(s) _____ is/are objected to.

8)☐ Claim(s) _____ are subject to restriction and/or election requirement.

Application Papers

9)☐ The specification is objected to by the Examiner.

10)☒ The drawing(s) filed on _23 July 2001_ is/are: a)☒ accepted or b)☐ objected to by the Examiner.

    Applicant may not request that any objection to the drawing(s) be held in abeyance. See 37 CFR 1.85(a).

    Replacement drawing sheet(s) including the correction is required if the drawing(s) is objected to. See 37 CFR 1.121(d).

11)☐ The oath or declaration is objected to by the Examiner. Note the attached Office Action or form PTO-152.

Priority under 35 U.S.C. § 119

12)☒ Acknowledgment is made of a claim for foreign priority under 35 U.S.C. § 119(a)-(d) or (f).

    a)☒ All b)☐ Some * c)☐ None of:

      1.☒ Certified copies of the priority documents have been received.

      2.☐ Certified copies of the priority documents have been received in Application No. _____.

      3.☐ Copies of the certified copies of the priority documents have been received in this National Stage application from the International Bureau (PCT Rule 17.2(a)).

    * See the attached detailed Office action for a list of the certified copies not received.

Attachment(s)

1)☐ Notice of References Cited (PTO-892)

2)☐ Notice of Draftsperson's Patent Drawing Review (PTO-948)

3)☐ Information Disclosure Statement(s) (PTO/SB/08)
    Paper No(s)/Mail Date _____.

4)☐ Interview Summary (PTO-413)
    Paper No(s)/Mail Date. _____.

5)☐ Notice of Informal Patent Application

6)☐ Other: _____.

DETAILED ACTION

Response to Arguments

1.   Applicant's arguments filed 8/6/07 have been fully

considered but they are not persuasive. The applicant argues:

2)   1) The 101 rejection of claims 9-12 should be withdrawn

because claim contains the feature of "a plurality of service

servers each rendering a service via a network," and thus

defines a useful machine or manufacture by identifying the

physical structure of the machine or manufacture in terms of its

hardware or hardware and software combination, and thus defines

a statutory product (see 2nd paragraph of page 7 of applicant's

remarks);

2)   "Donaghue does not process request of low level service

requirements when higher level requests are being processed.

Donaghue col. 3 lines 15-25 merely discusses that each

application has priority levels. **Not that the lower level

service requests are still processed when the system is

saturated,** (emphasis added)" (see lines 4-7 of page 8 of

applicant's remarks).

3)   "A feature of the claims is to prioritize service

request in a system **that has a limited number of servers** by

moving servers from one priority group to another (emphasis

added). In the case where an adequate number of servers are

available, there is no need to prioritize. Therefore, the
combination of Choquier and Donaghue taken separately or in
combination, fails to teach or suggest 'wherein the service
request with a high service level requirement is preferentially
processed while still processing service requests of a low
service level requirement.'"

4) The cited references teach away from the combination and
the resulting combination would not function because Choquier
and Donaghue teaches handing transaction in an opposite manner
(see last full paragraph of page 8 and paragraph bridging pages
9 and 10).

2.   **As per argument 1, the Examiner disagrees.** Claim 9 is
directed toward an service managing apparatus that *accommodates*
a plurality of service servers (emphasis addeded). The
apparatus is described as comprising two elements, namely a
managing unit and an intermediate server shifting unit. At
paragraph 163 of the instant specification, the applicant
discloses the capabilities of the service managing server may be
implemented as a program. Therefore, it is reasonable to
construe that the units that comprise the service managing
apparatus may be software modules, making the entire apparatus a
collection of software modules, and thus software per se.

3.   **As per argument 2, the Examiner disagrees.** There is no

language in the claims that requires a situation in which the

system is "saturated". At lines 50-52 of column 3, Donaghue

teaches that all transactions at all priority levels are allowed

to have there service goals met (meaning that all requests at

all priority levels are processed).

4.   **As per argument 3, the Examiner disagrees.** There is no

language in the claims specifying the number of servers in the

system or any language implying a limited number of servers.

Again, at lines 50-52 of column 3, Donaghue teaches that all

transactions at all priority levels are allowed to have there

service goals met (meaning that all requests at all priority

levels are processed).

5.   **As per argument 4, the Examiner disagrees.** The Examiner

has only relied on Donaghue to teach grouping servers by

priority and handling processing transactions of all priorities.

The Examiner has not relied on Donaghue to teach how the servers

and transactions are paired. The teachings of Donaghue relied

upon result in an improvement to the system of Choquier, not its

destruction. The applicant is reminded that the test for

obviousness is not whether the features of a secondary reference

may be bodily incorporated into the structure of the primary

reference; nor is it that the claimed invention must be

expressly suggested in any one or all of the references.

Rather, the test is what the combined teachings of the

references would have suggested to those of ordinary skill in

the art.   See *In re Keller*, 642 F.2d 413, 208 USPQ 871 (CCPA

1981).

Claim Rejections - 35 USC § 101

6.   35 U.S.C. 101 reads as follows:

> Whoever invents or discovers any new and useful process, machine,
> manufacture, or composition of matter, or any new and useful improvement
> thereof, may obtain a patent therefor, subject to the conditions and
> requirements of this title.

7.   Claims 9-12 rejected under 35 U.S.C. 101 because the

claimed invention is directed to non-statutory subject matter.

8.   Claim 9 is directed toward an apparatus however the

elements that make up the apparatus can be reasonably construed

as a software module or a software process.   For example, the

managing unit and server shifting unit can both be construed as

software, thus making the entire apparatus software, per se.

The same analysis holds for system claims 10-12.

Claim Rejections - 35 USC § 103

9.   The following is a quotation of 35 U.S.C. 103(a) which

forms the basis for all obviousness rejections set forth in this

Office action:

> (a) A patent may not be obtained though the invention is not identically
> disclosed or described as set forth in section 102 of this title, if the
> differences between the subject matter sought to be patented and the prior
> art are such that the subject matter as a whole would have been obvious at
> the time the invention was made to a person having ordinary skill in the
> art to which said subject matter pertains. Patentability shall not be
> negatived by the manner in which the invention was made.

10.   Claims 1-12 are rejected under 35 U.S.C. 103(a) as being

unpatentable over Choquier et al. (U.S. Patent No. 5,951,694

hereinafter "Choquier") in view of Donaghue, Jr. (U.S. Patent

No. 6,226,377 hereinafter "Donaghue").

11.   Referring to program claims 1 and 7, method claim 6,

machine readable medium claim 8, and apparatus claim 9, Choquier

teaches a method, apparatus and program causing an information

processing device (administration servers 134, see lines 4-12 of

column 24) to execute a service managing method accommodating a

plurality of service servers each rendering a service via a

network in response to a service request from a client, and

distributing the service request to the plurality of service

servers (see lines 26-35 of column 23), said method comprising:

managing the plurality of service servers by dividing the

service servers to define a plurality of groups of service

servers and dynamically shift service servers among the

plurality of groups and render a service as a service quality of

a group to which the shift is made (see lines 36-48 of column

23); and

reducing a load on a service server within any of the

plurality of groups by using at least one service server with

the lightest load as the service server within any of the

plurality of groups, when the load on the service server within

any of the plurality of groups increases, and a quality level to

be rendered by any of the plurality of groups cannot be

maintained (see lines 34-53 of column 24, wherein Choquier

teaches determining when to add servers from one group

experiencing high load from a group with a lower load).

Choquier fails to teach the service servers are grouped

depending on quality levels of the rendered services into a

high, low, and intermediate service groups, wherein the service

request with a high service level requirement is preferentially

processed while still processing service requests of a low

service level requirement.

Donaghue teaches, in an analogous system, the service

servers are grouped depending on quality levels of the rendered

services into a high, low, and intermediate service groups

(Donaghue teaches 1st, 2nd, and 3rd priority levels), wherein the

intermediate group offers low level service during a normal time

and reassigning servers between the server groups based upon the

load and level of service (see lines 45-63 of column 8).

Donaghue further teaches the service request with a high service

level requirement is preferentially processed while still

processing service requests of a low service level requirement

(see lines 15-55 of column 3).

It would have been obvious to one of ordinary skill in the

art at the time of the applicant's invention to modify the

system and method of Choquier with the above teachings of

Donaghue in order to more effectively utilize the available

resources and maintain service level agreements as suggested by

Donaghue (see lines 55-58 of column 1).

12.   Referring to claim 2, Choquier teaches the plurality of

service servers that are grouped comprise a storing unit storing

information to which group each of the plurality of service

servers belongs (see lines 21-27 of column 9).

13.   Referring to claim 3, Donaghue teaches a service quality is

the response time of the service server (see lines 44-52 of

column 5). It would have been obvious to one of ordinary skill
in the art at the time of the applicant's invention to modify
the system and method of Choquier with the above teachings of
Donaghue for the same reasons as mentioned above in the
rejection of claim 1.

14. Referring to claim 4, Choquier teaches, the method further
comprises recording and managing a log of service requests (see
lines 33-46 of column 10); and generating a schedule for each
date or day of the week based on the log recorded in the log
managing step, and changing a way of dividing the service
servers into groups according to a generated schedule (see lines
27-35 of column 23).

15. Referring to claim 5, Choquier teaches each of the
plurality of service servers executes a load measuring step
measuring a load value that a local service requires to process
a service request; and teaches a server is shifted to a
different group based on a load value of each service server,
which is notified from the load measuring step.

Choquier fails to teach the service servers are grouped
depending on quality levels of the rendered services into a
high, low, and intermediate service groups.

Donaghue teaches, in an analogous system, the service servers are grouped depending on quality levels of the rendered services into a high, low, and intermediate service groups (Donaghue teaches 1st, 2nd, and 3rd priority levels) and reassigning servers between the server groups based upon the load and level of service (see lines 45-63 of column 8).

It would have been obvious to one of ordinary skill in the art at the time of the applicant's invention to modify the system and method of Choquier with the above teachings of Donaghue for the same reasons as mentioned above in the rejection of claim 1.

16.   Referring to claim 10 Choquier teaches a system providing services over at least one network, comprising:

service servers grouped according to services provided (see lines 36-48 of column 23), however fails to teach the service servers are grouped depending on quality levels or that the service request with a high service level requirement is preferentially processed while still processing service requests of a low service level requirement.

Donaghue teaches, in an analogous system, the service servers are grouped depending on quality levels of the rendered services into a high, low, and intermediate service groups

(Donaghue teaches 1st, 2nd, and 3rd priority levels) and reassigning servers between the server groups based upon the load and level of service (see lines 45-63 of column 8). Donaghue further teaches the service request with a high service level requirement is preferentially processed while still processing service requests of a low service level requirement (see lines 15-25 of column 3).

It would have been obvious to one of ordinary skill in the art at the time of the applicant's invention to modify the system and method of Choquier with the above teachings of Donaghue in order to more effectively utilize the available resources and maintain service level agreements as suggested by Donaghue (see lines 55-58 of column 1).

17.   Referring to claims 11 and 12, Choquier teaches, a load shifting unit reducing a load on a selected server within any group of the service server wherein the load shifting unit reduces the load on the selected server by shifting a portion of the load from the selected server to at least one server having a lightest load (see lines 34-53 of column 24, wherein Choquier teaches determining when to add servers from one group experiencing high load from a group with a lower load).

Donaghue teaches, in an analogous system, the service

servers are grouped depending on quality levels of the rendered

services into a high, low, and intermediate service groups

(Donaghue teaches 1st, 2nd, and 3rd priority levels) and

reassigning servers between the server groups based upon the

load and level of service (see lines 45-63 of column 8).

It would have been obvious to one of ordinary skill in the

art at the time of the applicant's invention to modify the

system and method of Choquier with the above teachings of

Donaghue for the same reasons as mentioned above in the

rejection of claim 1.

Conclusion

18. **THIS ACTION IS MADE FINAL**. Applicant is reminded of the

extension of time policy as set forth in 37 CFR 1.136(a).

A shortened statutory period for reply to this final action

is set to expire THREE MONTHS from the mailing date of this

action. In the event a first reply is filed within TWO MONTHS

of the mailing date of this final action and the advisory action

is not mailed until after the end of the THREE-MONTH shortened

statutory period, then the shortened statutory period will

expire on the date the advisory action is mailed, and any

extension fee pursuant to 37 CFR 1.136(a) will be calculated

from the mailing date of the advisory action. In no event,

however, will the statutory period for reply expire later than

SIX MONTHS from the mailing date of this final action.

Any inquiry concerning this communication or earlier

communications from the examiner should be directed to Eron J.

Sorrell whose telephone number is 571 272-4160. The examiner

can normally be reached on Monday-Friday 8:00AM - 4:30PM.

If attempts to reach the examiner by telephone are

unsuccessful, the examiner's supervisor, Kim Huynh can be

reached on 571-272-4147. The fax phone number for the

organization where this application or proceeding is assigned is
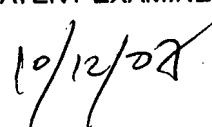
571-273-8300.

Information regarding the status of an application may be obtained from the Patent Application Information Retrieval (PAIR) system. Status information for published applications may be obtained from either Private PAIR or Public PAIR. Status information for unpublished applications is available through Private PAIR only. For more information about the PAIR system, see http://pair-direct.uspto.gov. Should you have questions on access to the Private PAIR system, contact the Electronic Business Center (EBC) at 866-217-9197 (toll-free). If you would like assistance from a USPTO Customer Service Representative or access to the automated information system, call 800-786-9199 (IN USA OR CANADA) or 571-272-1000.

EJS
October 4, 2007
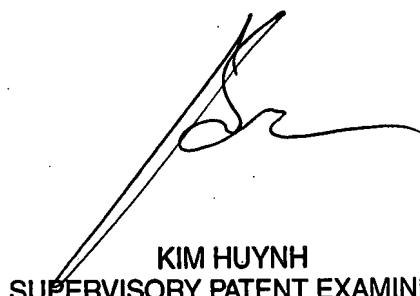
KIM HUYNH
SUPERVISORY PATENT EXAMINER

10/12/07